

הקן החדשה לישראל
New Israel Fund
الصندوق الجديد لإسرائيل



The Israel Religious Action Center

שתייל
Shatil
The New Israel Fund
Initiative for Social Change

Excluded, For God's Sake: Gender Segregation in Public Space in Israel



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Written by

Attorney Ricky Shapira-Rosenberg

Consultation

Attorney Einat Hurvitz, Attorney Ruth Carmi, Attorney Orly Erez-Lihovski

English translation: Shaul Vardi

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Introduction

Since 2001, the Israel Religious Action Center (IRAC) has been monitoring the demands by extreme elements in the Haredi (ultra-Orthodox) public to introduce segregation between women and men (gender segregation) in the public sphere. These demands first emerged several years earlier, in 1997, when it was decided on a trial basis to separate women and men using two bus lines in Jerusalem and Bnei Brak. Women were to use the rear door while men would board by the front door, and accordingly the front seats would be reserved for men, and the rear seats for women.

Although there was no discussion of the conclusions from these experiments, over the years the number of bus lines enforcing gender segregation has grown, as have the number of testimonies by women complaining of forced segregation and humiliating treatment including, in some cases, verbal and physical violence. In response to these complaints, IRAC has demanded that the Ministry of Transportation and the transportation companies halt this discriminatory practice. Since they have refused to do so, IRAC has submitted a petition to the Supreme Court seeking to establish a precedent on this matter; the petition is pending.

Over the years since it began to monitor the developments relating to bus lines, IRAC has also received complaints from women and men relating to enforced segregation in other public spaces. IRAC has contacted the relevant authorities in response to these reports. Since this is clearly a growing phenomenon, IRAC decided to prepare this report in order to provide an up-to-date picture of the full range of public spaces in which attempts are being made to impose new norms based on the segregation of women and men.

It is impossible to ignore the fact that the demands for segregation invariably involve relegating women to the back of a given space; sometimes, they also imply their conceptual exclusion from the space. For example, segregation of men and women in buses was translated into the demand that women must board by the rear door and sit in the rear seats, while the front door and seats are reserved for men. It is no coincidence that the extremist elements in Haredi society that demand segregation did not suggest that women should board by the front door and sit in the front seats in the bus, or that women should sit on the right-hand side of the bus and men to the left. The demand for women to sit in the rear of the bus illustrates the fact that any demand for segregation between women and men is based on the identification of women with the private realm, and on the desire to remove women from the public realm in order to maintain the gender hierarchy.

This patriarchal approach, in which the public realm belongs primarily to men, has been characteristic of Jewish communities over the generations. Nevertheless, it is interesting to note that remains from the Second Temple period do not reflect the existence of separate women's sections in synagogues, despite the fact that it seems that women attended synagogue in this period. The ongoing exclusion of women from the public realm is generally a tool for implementing two key values: modesty and the integrity of the family. Jewish society developed a role for women that was mainly confined to the home, and emphasized the need to preclude women from arousing men to sexual temptation in the public arena. The main function of women was to be mothers and wives, while the man filled the functions outside the home. When the demand for segregation of women and men is based on this social perception, the nature of the segregation is hardly surprising; the objective is that women, who

bear the responsibility for sexual purity, will be invisible. At public gatherings, for example, women are required to sit at the rear or in the gallery, while the front seats are reserved for men. In one case, we even encountered a case of total exclusion: a public gathering of the customers of a bank was designated for men only. Accordingly, the term “gender segregation” does not refer to a system that divides public space into two equal halves, maintaining equal access for both sexes. Almost invariably, it entails the displacement of women and their removal from the public realm.

The growing phenomenon of gender segregation in bus lines and other public places has highlighted three factors that must be addressed: The first is the basic requirement for equality between women and men and the protection of personal liberties. The second is the fact that Haredi society is far from monolithic. It is a mistake to view Haredi society as a homogenous “black mass” with uniform opinions and lifestyles.¹ In reality, Haredi society consists of diverse factions, and differing approaches can be found regarding gender segregation. Not all members of Haredi society agree with the demands for segregation; many Haredim, both men and women, view these demands as an undesirable form of extremism that is damaging to both sexes. Many of those who oppose segregation express their opinions anonymously, due to their fear of being perceived as separating themselves from their society; nevertheless, these voices can be clearly heard.²

The third aspect that deserves attention is that even if we accept that Haredi society in general demands gender segregation (a problematic assumption, as we have seen), and even if such demands may be lawful, it is impossible to divide public space in Israel in a dichotomous manner into space belonging clearly to the Haredi public and space belonging to the general population. The experience with the separate bus lines has shown that it is impossible to divide Israeli cities, or the country as a whole, into areas that clearly serve a population that is interested in segregation. The same is true of health clinics situated in Haredi neighborhoods that still serve diverse populations. Accordingly, creating a separate public space creates an immediate need to create an alternative for those who consider themselves injured by such space. Such an approach requires the allocation of resources by the state for this purpose, and implies the division of public space into one section that respects the values of equality and liberty and another that ignores these values.

While processing complaints about the gender segregation, IRAC has identified an alarming phenomenon: the absence of government policy on the question of segregation in public space. For example, there has been no systematic examination (including from a legal perspective) of the legality of segregation; there are no guidelines or thoughts about how to respond to demands for segregation; and there are no clear criteria delineating what is permitted and prohibited in this context. Moreover, the demands for segregation from certain sections of the Haredi public have not met with a concerted response from the non-Haredi public (which we shall refer to in this report as “the general public.” In many cases, the general public is unaware that gender segregation is a distinct phenomenon; at most, people may be aware of one or two specific instances, sometimes in completely different spheres of life. Accordingly, no broad opposition has emerged to this phenomenon and no counter-effort has been

1. For more on this aspect, see: *Haredim in Israel: Integration without Assimilation*, Immanuel Sivan, Kimi Kaplan (eds.), pp. 224-276 (Van Leer Institute, Hakibbutz Hameuchad Publishers) (in Hebrew).

2. See the report of the Committee to Examine Transit Arrangements in Public Transport in Lines Serving the Haredi Sector, appointed by the Minister of Transportation on October 26, 2009, section 23E.

made to prevent the imposition of gender segregation as a norm. The failure of the government to formulate clear policy and red lines on this subject, together with the pressure applied by Haredi factions upon decision-makers and politicians and the absence of counter-pressure from the general public, have resulted in an increasing pattern of segregation. The demands for segregation are combining and spreading to enter into a growing range of spheres of life and geographical spaces, thereby acquiring increasing normative validity.

The goal of this report is to raise public awareness on the subject of gender segregation. The report documents the phenomenon of segregation in public space and the manner in which it is imposed, exposing the issue to Israeli society in order to compel the population to address this policy in a deliberate manner and to facilitate public discussion. A further goal of the report is to propose policy guidelines which reflect the nature of the State of Israel as a Jewish and democratic state and which are consistent with Israeli law.

This report presents:

1. Findings from the field relating to gender segregation.
2. An analysis of the Jewish religious requirement for gender segregation and the role of women in Judaism.
3. A legal analysis of the possibility to impose gender segregation in public space on the basis of the laws of the State of Israel.
4. Recommendations on responding to demands for gender segregation in public spaces with the goal of protecting equal and common public space, while respecting diversity, liberty, freedom of religion, and freedom from religious coercion for all individuals.

A. The Phenomenon of Gender Segregation – Factual Findings

This chapter presents the testimonies of men and women who have encountered demands for gender segregation in places that form part of the public space in Israel. Some of these demands have been raised by governmental or statutory bodies, such as the Ministry of Education or the Western Wall Heritage Fund; others have been raised by private citizens, such as shopkeepers, or have occurred on the sidewalks. The growing number of complaints, and the diverse locations involved, led us to the realization that this is a generalized phenomenon; this report attempts to gauge its dimensions. The headings of the sub-sections in this chapter reflect the demands for gender segregation in each of the spheres in public space: public institutions providing basic services, such as clinics and post offices; places used for religious ceremonies, conferences, and events; and shops and sidewalks.

Gender segregation in public places providing services:

1. Gender segregation in buses

In 1997, public transport companies (particularly the Egged bus company) began to operate special bus lines for the Haredi public. The phenomenon began with two lines in Jerusalem and Bnei Brak, but today Egged operates some 50 “Mehadrin” (“extra Kosher”) lines – mainly intercity routes, but also some urban lines. Women board these buses through the rear door and men through the front door; the seating is also segregated. Sometimes female passengers are required to be in modest dress (arms and legs covered). The journeys on the Mehadrin buses are usually more direct than those on regular lines, and the cost of travel is significantly less. Women who object to the rules are subjected to harassment and intimidation; in some cases, they are subjected to physical violence.

IRAC began to act on the subject of separate bus lines in 2001, contacting the Ministry of Transportation and the public transport companies to demand that they end the practice of gender segregation. After the Ministry of Transportation and the bus companies refused to respond, IRAC submitted a petition against them in 2007, together with several women who were injured while traveling on Mehadrin lines. The petition demanded the introduction of alternative lines without gender segregation, and required the authorities to ensure the safety of female passengers (HCJ 746/07). The Ministry of Transportation replied that the gender segregation is a “voluntary arrangement,” and that the ministry does not intend to intervene in the matter. Egged responded that Haredi society constitutes a religious minority whose values should be respected by the state as part of a multicultural state.

During a hearing in the case in January 2008, the Supreme Court criticized the manner in which gender segregation is implemented on buses, and recommended that the Ministry of Transportation appoint a committee to examine the matter. The committee that was established received hundreds of letters from men, women, and organizations opposed to segregation, as well as thousands of letters from Haredim supporting the policy. IRAC also submitted its position to the committee.

The committee submitted its conclusions in October 2009, finding that public bus routes applying gender segregation are unlawful in accordance with the existing law in the State of Israel. The committee also found that an arrangement in public transportation that includes segregation in general, and gender segregation in particular, inherently entails a dimension of coercion.

The committee's main recommendation was to introduce a temporary arrangement on the bus lines that have so far imposed gender segregation. According to the arrangement, both doors would be opened and each passenger (male or female) could choose where to sit. No segregation would be defined, however, and no such arrangement would be enforced, whether explicitly or implicitly.

As an appellant, IRAC submitted its response to the Committee's recommendations. IRAC expressed agreement with the committee's conclusion that the segregation arrangement is unlawful, but noted its reservations concerning the proposed temporary arrangement due to the real concern that this arrangement would also be used in practice to impose segregation. In addition, IRAC demanded that the fares should be identical for all lines serving the same origin and destination. If it was decided to adopt the temporary arrangement, IRAC asked that the committee establish a procedure for supervising the operation of the experimental lines in order to ensure that the rules would be observed and gender segregation would not be imposed on passengers. The Minister of Transportation stated that he intended to post signs on the segregated lines in the form of a recommendation to passengers. Such signs would be contrary to the report's findings and recommendations, and accordingly the court issued an interim injunction requiring the implementation of the temporary arrangement as decided by the committee. The court also issued a decree nisi ordering the minister to explain why he should not act in accordance with the report's recommendations. In response, the Minister of Transportation announced that he would honor the interim decree and submit a report on the findings of the trial period in the lines defined in the past as gender-segregated lines. The minister recently submitted a report suggesting that the existing arrangement has been a failure.

In light of the failure of the Ministry of Transportation to supervise the lines, IRAC decided (together with Noar Telem, the Masorti Movement, Kolech, Jerusalemites, The Faithful of Torah and Labor, Meretz, and Free Israel) to examine the situation regarding gender segregation on buses. Between August and October 2010, volunteers from the above-mentioned organizations undertook 128 journeys. Various complaints were received concerning 31 of these journeys (approximately one-fourth the total sample), including cases when women were prevented from boarding by the front door or from sitting in the front section of the bus. Many women experienced harassment and serious threats from other passengers, sometimes with the support of the driver. The complaints show that friction and violent confrontations continue to occur on the gender-separated lines due to the demand for segregation. Accordingly, in a response submitted to the court, IRAC demanded real change on the ground. The rear door should be closed when passengers board, in order to ensure that they can freely choose their seat. A hearing of the petition was held on November 21, 2010, and we are awaiting a final verdict.

2. Segregation in HMO clinics in Jerusalem

During the course of 2008, female volunteers from IRAC visited two health clinics in Jerusalem, one belonging to Clalit HMO and the other to Meuchedet HMO. Both were situated in the Mevor Baruch neighborhood. The volunteers found that both clinics impose gender segregation in the waiting rooms. At the Meuchedet clinic, the waiting room is divided by a wall passing through the middle, with separate waiting areas to each side. One side is demarcated for men only and the other for women. At the Clalit clinic on Dvora Hanevi'a St. in Jerusalem, there are completely separate entrances for women and men, leading to separate waiting areas in different wings of the building. Two entrances lead to the Clalit clinic; one entrance is labeled "Mehadrin Clinic – Men," while the other is labeled

“Mehadrin Clinic – Women.” Both rooms are of equal size, and a poster on the wall in each room presents the rules of the Mehadrin clinic: “Full segregation will be arranged between men and women, including male physicians for men and female physicians for women... Female employees must be in modest dress (long dress, stocking, long-sleeved shirt, closed collar), in respectable clothes, not tight-fitting or see-through. It must be publicized that clients attending this clinic must respect the place by dressing modestly and appropriately.” The rules also stated that “in cases of serious illness, when a woman must be examined by a male specialist, if it is necessary to expose part of the body – the patient will wear a gown with a zip fastener that can be opened in order to expose only that part requiring examination.” On the subject of children, the rules declare: “Those who take extra caution to arrange a male physician for boys and a female physician for girls will win the Lord’s blessing; this is a mighty step for reinforcing the sanctity of Jewish children.” The rules also mention other aspects that accompany gender segregation: There will be no non-Haredi literature (newspapers, magazines, etc.) in the waiting rooms, and it is forbidden to bring pictures or diagrams depicting the human body in an immodest way into the Mehadrin clinics.³

3. Segregation in the HMO clinics in Beit Shemesh

On November 16, 2007, an article was published in *Yediot Acharonot* revealing that clinics of Clalit HMO and Meuchedet HMO in the city of Beit Shemesh had introduced a system of gender segregation in response to the demands of the Haredi population in the city. Meuchedet HMO placed a screen in the waiting rooms “as a means to enable men to wait for their appointment behind the screen, without encountering women whom they consider immodestly dressed.” At the Clalit HMO branch, separate reception hours were set for men and women. Responding to an inquiry from IRAC, Meuchedet HMO clarified that the clinics in the Haredi neighborhoods of Beit Shemesh include a wooden screen dividing the waiting area for men from a seating area for women “due to modesty and problems relating to ritual purity.” It is worth noting that the Jewish religious laws of ritual purity do not include any prohibitions concerning the presence of women and men in the same room.⁴

4. Segregation of men and women in a post office in the Bukharian neighborhood of Jerusalem

On December 28, 2007, *Yediot Acharonot* reported that a new post office branch in the Bukharian neighborhood of Jerusalem had introduced separate lines for men and women. The report noted that “this is the first time that men and women waiting in line have been fully segregated. In his speech, [then] Minister [of Communications] Atias promised that ‘from here on, this idea will be disseminated throughout the country.’” Similar comments appeared in Press Release No. 618 on behalf of the Israel Postal Service, dated December 24, 2007, which noted that Israel Post had inaugurated its flagship branch for the Haredi sector, named “Sha’arei Geula.” According to the release, the Minister of Communications commented that “this is the first branch that will include segregation of women and men, and in the future I expect we will see other branches operating in the same manner.” Following these comments, we contacted the Ministry of Communications for clarification. The ministry replied that at present there is no segregation between men and women in post offices; however, the ministry

3. Yehuda Shochet, “Segregation Barrier,” *Yediot Acharonot*, February 21, 2010.

4. Peretz Yedidia, “Mehadrin Branches: Gender Segregation in HMOs,” *Yediot Acharonot*, November 16, 2007.

did not categorically rule out the demand for segregation by part of the population, i.e. the Haredi public.⁵

5. Establishing a “kosher” police station in Ashdod

On March 21, 2007, Ma'ariv reported that the Israel Police had decided to establish a “kosher police station” for the Haredi population in the city of Ashdod. The report noted that the station had been opened in cooperation with a group of ten rabbis, who had presented the condition that no policewomen or female volunteers would work in the facility. The station was due to open at the end of March. In response to our inquiry, Ashdod Police replied that there was no intention to open an additional police station, and claimed that the report related to a community police base that recruits volunteers for local security guard functions. The police commander claimed that the rabbis had imposed restrictions on Haredi women preventing their volunteering for the civil guard.⁶

6. Segregation on El Al flights

On January 12-13, 2009, the press reported that El Al was at an advanced stage of negotiations with the Haredi public to operate special flights for this sector ahead of the Passover festival. According to the reports, these flights would impose full segregation of men and women, and only male flight attendants would serve the men's seating area. In addition, no movies would be shown on these flights, and the food served would be strictly kosher. According to the reports, these flights would not be additional ones added to the regular flights; instead, existing flights would be converted into “Mehadrin flights,” while secular passengers would be concentrated in the “regular” flights. IRAC contacted the Minister of Transportation and the Airports Authority on this matter, arguing that such a policy would gravely injure the right to equality and the right to dignity of passengers wishing to fly with El Al who are not interested in gender segregation. In their response, we were informed that the newspaper reports about gender-separated flights were unsubstantiated, and that El Al does not intend to run such flights. However, El Al occasionally leases airplanes to other groups, such as commercial companies flying its employees on overseas vacations. These are not regular flights, but charter flights (of the Sun Dor company), or additional flights distinct from the regular scheduled flights. Within this rubric, airplanes have been leased to fly Haredim to Uman in Ukraine (these flights were staffed solely by male flight attendants, but there was agreement was reached in advance concerning gender segregation). As mentioned, these flights were in addition to El Al's regular scheduled flights to Ukraine.⁷

7. Poalei Agudat Israel Bank holds men-only convention

On December 7, 2009, the Galei Tzahal radio station reported that Poalei Agudat Israel Bank, which belongs to the International Bank Group, was holding a convention in Ramat Gan for its customers on the next day (December 8, 2009) and that the convention was intended for men only. An invitation sent to the bank's customers stated that participation was for men only, due to the customs of the Haredi community. In Haredi society, many women are breadwinners in the home and manage the household, yet the bank chose to ignore this reality and to schedule a convention for men only. In response to a

5. Avishai Ben Haim, “King of Flesh and Blood,” Ma'ariv NRG, October 25, 2007

6. Almog Boker: “Coming Soon in Ashdod – Haredi Police Station,” Ma'ariv, March 21, 2010.

7. Kobi Nachshon, “Coming Soon in El Al: Mehadrin Flights for Haredim,” Ynet, January 12, 2009.

complaint from IRAC about the offense to women, the CEO of the bank stated that Poalei Agudat Israel Bank, which operates in the Haredi sector, holds many events for the bank's employees and customers on the basis of gender segregation. Regarding this specific convention, the CEO claimed that it was a closed event for selected customers of the bank. The convention focused the dilemma facing Haredi men, who are committed to the religious value of devoting time to religious studies, but must also help provide for the home.⁸

8. Proposal by Deputy Health Minister Yaacov Litzman to establish separate-sex psychiatric hospitals in Jerusalem

The intention of the deputy health minister was first reported in Ha'aretz (December 1, 2009), and won the approval of the Knesset Health Committee. Deputy Health Minister Litzman commented, "In my opinion, there should be two separate hospitals. For the present, I am just creating separate departments..."

While it may be appropriate to create separate-sex departments in some hospitals, mainly in order to meet the needs of the Haredi public, there is general agreement among professionals that running two separate hospitals will impair and endanger the patients' health. The professionals who participated in the meeting of the Knesset Health Committee were united in describing the price that will be paid for gender segregation in health terms:

"A hospital is a mirror of normative life. I would like to bring something from my personal experience. I worked in a mixed-sex department in Eitanim Hospital, and later I moved to a closed department in Talbiyah. The level of violence in the men's department was far greater than in Eitanim. It was much more violent and dangerous department... I do not think it is right to separate the sexes in closed departments. There should be separate rooms for each sex, but certainly not separate hospitals or separate rehabilitation... There is already a stigma in Israeli society about mental health, and this will only make it worse. It creates the feeling of a women's prison and a men's prison..."

(Robin Karni, member of the National Mental Health Council)

Professor Michael Shlafman, deputy director of Kfar Shaul, commented:

"The psychological condition in closed single-sex departments is much worse than in the mixed departments... The open departments suffer from a shortage of staff, because most of the staff is in separate departments."

These comments show that separating men and women in psychiatric hospitals causes grave damage to the health and rehabilitation of the patients. Professionals are broadly opposed to the additional costs required for gender segregation in hospitals, which will impair the health of patients and their families. Despite this, the demands for segregation from sections of the Haredi community are being met and hospitals are opening separate-sex departments.⁹

8. Rotem Sela, "Poalei Agudat Israel Bank: Strictly No Entry for Women," Ma'ariv NRG, December 8, 2009.

9. Dan Even, "Deputy Health Minister Litzman initiates segregation of men and women in Jerusalem psychiatric hospitals," Ha'aretz, December 1, 2009.

Segregation in places where religious ceremonies are held:

9. The Western Wall

In recent years, there has been an apparent trend to expand the area in which gender segregation is required in and around the Western Wall. This has been manifested in various ways:

A. Men-only path

In 2008, a separate path for men was marked on the edge of the plaza by the Western Wall. The path leads from the plaza to the stairs in the rear of the plaza, leading to the center of the Old City. The marking of this path for men only creates separate public space for men, without any parallel provision for women.

B. Separating men and women in the upper plaza, including coercive enforcement

On Tisha B'Av in 2009, forced segregation was imposed on men and women in the upper section of the Western Wall plaza – an area that lies beyond the section divided into separate prayer areas for men and women immediately adjacent to the wall. . Dozens of security guards were hired to enforce the new segregation. The guards circulated among the crowds and demanded the women stand to one side and men to other. Those who declined to obey were asked to leave the plaza.¹⁰

On Shavuot 2010, the Rabbi of the Western Wall ordered that all the bathrooms to the northern side of the plaza, by the Western Wall Tunnels, should be earmarked for men only, while toilet booths were provided for women close to the women's prayer section, in order to prevent the sexes mixing. In addition, divides were placed across the entire upper plaza, and dozens of officials ensured that women and men were separated in this section, as well as by the Wall itself. The result was that no common space for men and women remained by the Western Wall – the entire area was segregated by gender, despite the fact that such segregation is only permitted in the section intended for prayer.

C. Segregation at ceremonies held at the Western Wall, and prohibition on women leading ceremonies and speaking in public

In July-August 2009, the Jewish Agency for Israel held ceremonies for immigrants who came to Israel in coordinated flights from various countries of origin. The first ceremonies were held in the Western Wall plaza, which is not separated by a divide. The ceremony was led by a female MC, and the families of immigrants sat together. During the course of the ceremony, the immigrants received their Israeli identity cards. In mid-July 2009, the Rabbi of the Western Wall, Rabbi Shmuel Rabinowitz, ordered that the men and women must sit separately at the ceremony, and that women should not be allowed to lead the events. Accordingly, a ceremony held on July 22, 2009 for immigrants from France imposed separate seating for men and women, as did a ceremony for immigrants from Britain. We contacted the Rabbi of the Western Wall and the Minister of Religious Services and asked them to explain this demand. Their response was that the Western Wall plaza is not to be used for non-religious ceremonies, while religious ceremonies will, by their nature, include gender segregation. Following the interference by the Rabbi of the Western Wall in the ceremonies held by Jewish Agency for Israel, it was decided to hold the events in a different location.¹¹

10. "Shababnik? Don't come to the Wall," Hadrei Haredim, July 29, 2009.

11. Yair Ettinger and Nir Hasson, "Jewish Agency to stop holding ceremonies at Western Wall following rabbi's demands,"

D. Introduction of “Modesty Wardens”

Tour guides who have brought groups to the Western Wall for years (mainly groups of Jewish visitors from abroad) have reported an increasingly strict approach to gender segregation in the Western Wall plaza, and increasingly strict demands for modest dress. This trend has included the extension and heightening of the partition between the men’s and women’s sections and the placement of an additional divider. Demands for modest dress have been intensified, and female “modesty wardens” now approach women whose sleeves are not considered to be sufficiently long and demand that they cover themselves. To the rear of the plaza, at a point distant from the Wall itself, mixed groups could formerly sit together, pray in Hebrew or English, or simply recite a blessing and sing. None of these activities are now possible. Such actions meet with an angry response from the wardens on the site, who demand that the mixed-sex activities be halted. “I really don’t like to come to the Western Wall, because the message has been inverted – instead of a place that unites us and is genuine, you have a feeling of something artificial and alienating. All you can do is watch – you don’t feel as if you belong to the place. The tourists are horrified by the wardens’ reactions, so we prefer to compromise and omit the spiritual dimension of the visit to the Western Wall” (Zvi Levran, tour guide).

E. Gender segregation at the security gates

The security inspection gates at the entrance to the Western Wall plaza from the direction of the Dung Gate are divided into areas for men and women. Men and women are supposed to enter from separate directions, and the entire process of inspecting bags is segregated. Despite the fact that the security gates are situated far from the prayer area, which includes a divider between the men’s and women’s sections, gender segregation has expanded to this entrance. Between the security inspection area and the entrance to the prayer area, there is a large space in which no effort is made to separate women and men, yet segregation is imposed at the gates. Women or men who wish to enter the area without being classified by their gender have no possibility to do so.

F. Restricting the activities of groups visiting the Western Wall

On November 5, 2009, Michal Barkai led a group of 12th-grade students from Mazkeret Batya on a visit to the Western Wall. As part of the tour, the boys and girls entered the upper plaza area and sang “Am Yisrael Chai.” Michal Barkai recalls: “Suddenly, the idyllic situation was disturbed. A Haredi woman with a head covering, dressed in a blouse proclaiming her status as a ‘warden’ on behalf of the Rabbi of the Western Wall, let loose a volley of curses to which I preferred not to respond: ‘Infidel! Get out of here!’” The tour guide then entered the prayer area with a group of girls. The warden again appeared, shouting at one of the female students – who was dressed in long pants and a long-sleeved blouse – to leave because she was not modestly dressed. The tour guide pointed out to the warden that the girl was modestly dressed and there was no cause to remove her, but the warden insisted. The tour guide left the lower area of the plaza, returned to the upper plaza with a group of girls only, and sang a prayer. At this point a man arrived, after being directed to the area by the female warden. Michal recalls: “He stood very close to me, in a threatening manner, and explained that ‘a woman’s voice is nakedness,’ and that if I did not stop the singing, he would call a policeman – and that is what happened.”¹²

12. Neta Sela, “The Jewish Wars: Is the Western Wall really in our hands?” Ma’ariv NRG, December 9, 2009.

10. Segregation on Mount Meron

Every year, a celebration in the memory of Rabbi Shimon Bar Yochai is held on Mount Meron in the Galilee on the festival of Lag Ba'Omer. Ahead of the celebrations in 2010, Rabbi Mordechai Halfon, the chairperson of the Meron community, explained the arrangements for those traveling to the site: "We have made two paths available for the Mehadrin route. One leads from the main road through Gate 10 to a connecting point with the old Mehadrin route, and the other – which is easier and suitable for those who have difficulty climbing – leads from the Meron bus stop to the connection point with the Mehadrin route. Women visitors will use the women's Mehadrin path, which passes along the ordinary road leading to the tomb." In addition, the bus lines carrying visitors to the site on Lag Ba'Omer were separated between men and women. No orderly policy was formulated on the basis of the needs of those visiting the site for such lines, and no criteria were defined for deciding how many lines should be segregated and how many mixed. Moreover, the religious term "Mehadrin" was used, creating the impression that a religious imperative to "adorn the commandment" is involved here – despite the fact that the bus journey has nothing to do with such matters. Rabbi Halperin's statement urging the public to use separate Mehadrin routes shapes public space on Mount Meron during the Lag Ba'Omer celebrations, without any public discussion of this matter. It should be noted in this context that the celebrations are a traditional event drawing mass crowds, including many visitors who do not belong to the Haredi community and certainly not to the extreme faction that demands gender segregation.

11. Segregation in funeral halls and cemeteries

Two funeral halls (Shamgar in Jerusalem and Segula in Petach Tikva) have introduced segregation between women and men. This is manifested in signs placed in the area intended for eulogies dividing the space into two sections. The burial society that manages the funeral demands that the public observe this segregation. A woman who attended a funeral at Shamgar cemetery explains:

"I came to the funeral and it was obvious to me that I would stand next to my husband, so that he could support me. But when I arrived I saw the signs, so I stood on the women's side and he stood with the men. I didn't want to create a fuss – that's the last thing you want to do at a funeral. But as a religious woman I suddenly asked myself why on earth they were separating men and women. Why did they make me worry about whether I was standing in the right place? Instead of mourning for my late aunt, I was busy wondering whether at this moment I constituted a temptation to someone. It's completely warped."

Segregation is also enforced during the funeral itself, as the mourners accompany the corpse to the cemetery. Men are called to walk at the front, while women are only allowed to follow on behind. In several places, women have even reported that the burial society prevented them from making eulogies. A woman who attended a funeral at Segula cemetery recalls:

"When Assi's mother died, I could not stand next to him in his deep mourning, although I knew it must be one of the hardest moments of his life. After the eulogies (which were given by men only, according to the custom in Petach Tikva), the men accompanied the coffin, and only after that the women followed... Assi made a eulogy in his mother's memory and then moved on with his brothers. At that moment, I felt that I ought to be with him. I remember my unpleasant feelings

– on the one hand, I was in deep mourning; on the other – I was confused. How could I reach Assi and stand next to him as they buried his mother? I think Assi felt the same way, because he managed to find me. I remember the strange feeling that instead of just thinking about his mother, Assi had to wonder where his wife was.”

In the community of Elyachin, women are not even permitted to take part in the funeral. Motti Avdiel, a volunteer in the cemetery, comments:

“The custom here is that women do not accompany the dead within the cemetery. The first part takes place in the plaza, where there is a shaded area for the mourners to gather. During the eulogies, the women are asked to stand in the open area. When they go to the grave, the women cannot go up to the grave. Only afterwards, when the men have left, the women approach the grave.”

The same custom is observed by the Hassidic communities in Jerusalem, and all those who are buried in their section of the cemetery are obliged to follow this practice.¹³

13. Zufiya Hirshfeld, “No entry for women at the cemetery in Elyachin,” Ynet, March 15, 2009.

Segregation at events and gatherings held by public bodies

In recent years, various public events and gatherings held by public bodies have imposed segregation between men and women. These include professional, public, and cultural events, and even entertainment functions. Although some of these events are organized by government bodies, gender segregation is imposed without any defined policy, and without considering the target audience in advance and examining the need for such segregation. Some of the events were intended for members of a specific profession, while others were intended for the general public.

12. Separate seating at a Ministry of Education meeting

On February 19, 2006, a meeting was held in the Torah Culture Department of the Ministry of Education in order to instruct representatives of organizations requesting financial support for religious classes on how to complete the application forms for the coming year. At the beginning of the meeting, the director of the department asked the women to move to the rear of the hall, so that the men would not have to watch the presentation “through the women.” Some of the women present complained about this demand, pointing out that it would be difficult for them to watch the presentation from the back of the hall, but the director repeated his demand, and the representatives present at the meeting were forced to acquiesce. The meeting lasted some three hours. Lively discussion took place among the men at the front of the hall, while the women at the back found it difficult to see and hear the explanations.

13. Gender segregation at a municipal conference on the subject of Haredi education

On May 12, 2010, a conference was held at the International Conference Center in Jerusalem on the subject of issues in Haredi education. One of the subjects due to be discussed at the conference was a strategic plan to address the shortfall in the construction of Haredi educational institutions. The conference attracted numerous secular participants with an interest in the subject. At the entrance, the organizers announced that women must sit to the left-hand side of the hall, behind a dividing screen. Laura Warton, a Jerusalem city council member, recalls: “To my surprise, on entering the organizers told me that I must move to the left-hand side of the hall. My complaints that this was a municipal event, and not an event of the Haredi Education Authority, were to no avail.”

14. Tours of the Western Wall Tunnels

In 2007, IRAC received a complaint from a woman who wished to book a tour of the Western Wall Tunnels for herself and her family during the intermediary days of the Passover festival. On attempting to book the tour by telephone, she was informed that the tours of the Western Wall Tunnels during the intermediary days of Passover did not require prior booking. The tours were held every 20 minutes, free of charge, but solely in the format of separate tours for men and women. This differs from the practice throughout the year, when tours must be booked in advance and a fee is charged, but the tours are mixed.

The Western Wall Tunnels pass along the Western Wall, exposing the entire length of the structure. This is one of the most popular tourist sites in Israel, and as such it attracts many visitors – religious, secular, and Haredi Jews, as well as large numbers of non-Jewish tourists. The Western Wall Heritage Fund is

the body responsible for operating the site; the Fund is a governmental body that receives a state budget from various government ministries. Following an inquiry by IRAC, the attorney-general ruled that the Western Wall Heritage Fund must hold the tours in the normal manner, and that there is no justification for imposing gender segregation in these tours.

15. Segregation at the Jerusalem Day celebrations

The Jerusalem Day celebrations were held in 2009 on King George St., one of the main streets in the city. On a central stage, a boys' choir sang Hassidic songs, while an MC encouraged the crowd to dance. A woman who was present on the scene reported: "The MC told the girls to move to one side and form a circle on the other side of the road. A group of boys danced close to the stage. The crowd was separated into men and women. Wardens in the crowd with yellow jackets stood between the men and women and made sure the segregation was observed. When they saw men or women on the "wrong" side, they told them to move over. All this in the middle of King George St. in the city center!"

16. Segregation at "fun days" for Magen David Adom volunteers

On August 17, 2009, Ynet reported that the Jerusalem District of Magen David Adom (Israel's Red Cross organization) had decided to hold separate "fun days" for men and women. An email stated that "due to the religious character of most of the volunteers in the District, separate events will be held – a special event for male volunteers and their sons, and a women's event intended for female volunteers, the female partners of volunteers, and their daughters." Many volunteers, including religious ones, were angry about this decision.¹⁴ Magen David Adom is a statutory organization established under the terms of the Magen David Adom Law, 5710-1950. The law authorizes the organization as the sole body active in Israel under the Geneva Convention dedicated to caring for the injured in wartime, preparing for this task in times of peace, and providing first aid and blood storage services for all residents. By definition, Magen David Adom serves the entire population of Israel and operates through volunteers. In Jerusalem, the organization relies on the services of a large group of volunteers from all sections of the population. Despite this, in organizing its "fun days" it chose to cater for a very limited group of volunteers and to use the standards of this minority when choosing how to plan the events for all the volunteers in the district.

17. Separate seating at meetings of local government bodies in Jerusalem

Har Nof is a large neighborhood of Jerusalem most of whose residents are Haredim and national-religious Jews, as reflected in the profile of their representatives on the neighborhood administration and the local community center. At staff meetings of the administration and community center, the then-director of the center placed a dividing screen to separate men and women. Following the objection of Zehava Fisher, a member of the administration, the dividing screen was removed, but women and men continued to sit separately during the meeting. Zehava Fisher states: "I had some arguments about this, even with some of the women secretaries. One in particular was sure that she knew exactly what men feel when they sit next to women. These arguments irritated me – I find the lack of modesty involved in talking about such matters repulsive. I am proud that I managed to have the dividing screen removed, and since then there have been no further attempts to put it up."

14. Ari Gelhar, "MDA: Separate fun days for women and men," My Ynet Jerusalem, August 17, 2009.

18. Segregation at the annual conference of the Puah Institute

The Puah Institute, which examines issues of fertility and medicine in accordance with the Halacha, holds an annual conference to discuss relevant questions. Gynecological experts present their positions at the conference, while rabbis discuss issues from the standpoint of religious law. Not a single female physician was invited to the conference, despite the fact that there are more than a few such physicians active in the field, including religious women who could add their perspective. Men and women sat separately at the conference. A religious woman who objects to the holding of the conference in this format notes:

“The fact that the conference discusses women’s fertility, yet not a single woman speaker appears, is a clear case of the objectification of women. Women are the subject of innovations in the Halacha and in gynecology, but they are not partners in dialogue invited to express their opinions. The fact that women and men sit separately at the conference further reinforces the view of women as a distinct group whose affairs are discussed by men, who must sit separately. I sat in the conference and it was really hard for me. I couldn’t understand those doctors who do not share the rabbis’ approaches but still continue to be a party to this.”

The conference has been held for ten years. The Kolech Religious Women’s Forum has monitored these conferences over the past three years, since learning of the gender-segregation policy and the refusal to invite women speakers. Despite complaints from Kolech, the Puah Institute persists in this policy, most recently at the conference held in December 2009.

19. Segregation at a performance at the Tel Aviv Culture Palace

On February 14, 2010, the singer Mordechai Ben David gave a performance at the Tel Aviv Culture Center. The performance was gender separated: the seats at the front were reserved for men only, while women were relegated to the rear seats.

Segregation in private businesses

We have recently encountered instances of gender segregation in private businesses providing various services and products. This is a completely new phenomenon in the Haredi sector itself. We have received more than a few complaints from people living within the Haredi community who see this development as part of a dangerous tendency to extremism that impairs the family unit, part of whose function takes place in public. This segregation limits the ability of parents and children to enter a store together and purchase produce, or to spend leisure time together. No action has been taken against gender segregation in private businesses, despite the fact that the examples given below constitute a violation of the Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law, 5761/2000. This law prohibits segregation of women and men, except in cases when this is justified on the basis of various factors relating to the character of the public, the presence of an alternative, and public needs.

20. Corner snack shop

On Yehezkel Street in the Bukharian neighborhood of Jerusalem there is a small shop called Mizrachi Snacks selling salted nuts and seeds and dried fruit. The shop has two entrances – a main entrance, and a side entrance with a sign stating “women only.” Women are permitted to access all parts of the shop, as are men, but entry into the shop is solely via this special entrance. This practice marks women as a distinct population and presents a special demand to this population alone.

21. Elevator in a banqueting hall

A banqueting hall called Nof Elite operates at 2 Yehezkel Boulevard in Modi'in Illit. The hall may be accessed by stairs and by an elevator. The stairs are intended for men, while women use the elevator. A Haredi resident of Modi'in Illit commented to us: “Why can't I use the elevator? I accept the segregation of women and men in the hall itself, but why can't everyone use the elevator? This has nothing to do with the Halacha. It is a case of coercion by extremists within the Haredi community, and others given in. They say to themselves, 'Well, if it bothers them, why not help them? After all, it's modesty and piety.' But no-one stops to think whether it bothers other sections of the population – maybe women? Or men who cannot use the stairs.”

22. Grocery store

The Ahiezer grocery store in Bnei Brak announced separate opening times for men and women. On Sunday through Tuesday, the shop is open for men only in the afternoon and for women in the morning. On Thursday and Friday, the morning is reserved for men only. An announcement about these separate hours appeared in the local newspaper Koach Hapirsum.

23. Fairground

During the intermediary days of Passover in April 2010, a fairground operated in the city of Modi'in Illit. The fairground was intended for children of kindergarten age or for the youngest grades in elementary school. The site opened in the morning for boys and in the afternoon for girls. Naturally this format

prevented families from spending time together and obliged families to divide the activities for children by sex. A Haredi father in the city contacted us and complained about the segregation of such young children, emphasizing the difficulties created for the family in spending time together during the Passover vacation. The father claimed that gender segregation is being imposed on the entire Haredi population due to the activities of fanatical Haredim from the Hassidic sects.

24. Pizza parlor

The Almost Free pizza parlor on Zefaniya Street in Jerusalem attempted to introduce separate lines for men and women. The clientele refused to follow the demand and the separate lines were abolished. However, two of the tables in the establishment are defined as “men only.”¹⁵

15. Yediot Yerushalayim, August 12, 2009.

Segregation on the sidewalk

25. Kerem Avraham

A broadsheet flyer signed by nine rabbis was posted on the streets of Jerusalem urging women to leave a sidewalk clear for men. The broadsheet appeared in the Har Zvi neighborhood of central Jerusalem, and relates to Amos, Zefaniya, and Eli Hacohen Streets, as well as the main road Malchei Israel Street. On all these streets, it was determined that the right-hand sidewalk should be reserved for men only. Signs stating “men” or “women” were hung over the sidewalks. A woman who passed along the road on a Friday testified:

“I walked along the road on the same side as I usually do. A young man saw me and drew my attention to the sign. I ignored it and walked on, and he started shouting. At moments like this, I feel angry about religion... I even feel angry toward G-d. I feel as though they are killing me. It is humiliating. As if we are an object... all this brainwashing about modesty.”¹⁶

26. Mea Shearim

On the morning before the festival of Sukkot in 2010, dividing screens were erected in the Mea Shearim neighborhood creating separate passageways for men and women. Private “wardens” were employed by extremist elements in the neighborhood to enforce the segregation. Following this incident, a petition was submitted to the Supreme Court (HCJ 6986/10). Responding to the petition, the state noted that an agreement had been reached with the relevant authorities in the Haredi community that the fences established in Mea Shearim would be removed immediately and that private wardens would no longer be employed. On the general level of principle, the state representative explained that the state accepted the principle of a prohibition against gender segregation in such clearly public spaces as the streets of the city.¹⁷

¹⁶. Itamar Shahaar, “Exposure: Right-hand sidewalk reserved for men on Shabbat,” Haredim, August 8, 2009.

¹⁷. Ari Gelhar and Roi Hellman, “The intermediate days in Mea Shearim neighborhood: No entry to women on the main

B. An Analysis of the Jewish Religious Requirement for Gender Segregation and the Role of Women in Judaism

When embarking on an examination of the demand for gender segregation in the Jewish sources, it is worth emphasizing that all the sources we will discuss were written exclusively by men. Throughout most of Jewish history, men alone studied and wrote works of Halacha (religious law). Men created religious laws and rules, interpreted them, and judged accordingly. This reality reflects the patriarchal structure of the ancient world in which the culture of the Jewish people developed. In this culture, women were excluded and perceived as “others” or marginal, enslaved to their fathers and husbands, and entirely at their mercy.

The exclusion of women appears in the Halachic literature, exegeses of the Bible by the later Sages, based on the assumption that when the Bible uses the masculine plural, this refers to men only; women are only included if they are specifically mentioned. Accordingly, regarding such Biblical verses as those prohibiting injury to others, stealing, or murder, the Sages asked “I have this [before me] only as far as a man is concerned; how then [can we know that it also applies to] a woman?”¹⁸ Thus, the basic assumption is that women are not bound by the commandments, and the Sages were obliged to make an exegetical effort in order to include them. Needless to say, this approach is the opposite of that in contemporary Hebrew, where masculine forms are usually assumed to refer to both men and women. In other cases, when the inclusion of women was inconsistent with the realities of the time, the exegetical effort was applied to permit exclusion. For example, women were exempted from studying Torah on the basis of the verse in Deuteronomy “you shall teach them to your sons,”¹⁹ regarding which the exegetical literature emphasizes “your sons – and not your daughters.”²⁰ Over time, the exemption of women from the requirement to study Torah was transformed into a prohibition, according to some arbiters. This was manifested in Halachic comments such as “let the words of the Torah be burned up, but do not let them be delivered to women,”²¹ or “anyone who teaches his daughter Torah, it is as if he had taught her frivolity.”²² Like the academies of the ancient world, the Beit Midrash (house of study) was selective in admitting students. The sages controlled this institution, which was deliberately intended for an elite group. No one even considered the possibility of permitting women to enter the Beit Midrash, since they were not allowed to study Torah.

The principle that women are not to assume positions of authority, such as the roles of rabbi or religious judge was formulated in a similar manner on the basis of a verse in Deuteronomy: “place a king above you.”²³ The “Sifrei” commentary deduces from this “a king – and not a queen,” while Maimonides added “One does not place a woman on the throne, as it says ‘a king over you’ – not a

18. See HCJ 6986/10 Jerusalem City Councilor Rachel Azaria et al. v Israel Police et al. (not yet published).

19. For example, see the Mechilta de Rashbi, 21. See also the Hannah Safrai and Avital Cambell Hochstein, *Women Inside, Women Outside*, Yediot Acharonot Publishers, Judaism Here and Now.

20. Deuteronomy 11:19.

21. Kiddushin, 29b.

22. Jerusalem Talmud Sota 16 I, chapter 3, Halacha 4.

23. Jerusalem Talmud, Sota 20a. Maimonides elaborates on this point: “The Sages ruled that one should not teach them to one’s daughters because the mind of most women is not disposed to study, and they will turn the words of Torah into words of nonsense due to their limited understanding” (Hilchot Talmud Torah 1:13).

queen. Similarly, for all offices in Israel, only a man may be appointed.”²⁴ Accordingly, the principle that women are to be excluded from the public domain and separated from men is one that was developed and interpreted in a world in which women had no foothold. To a large extent, this continues to be the reality in Orthodox society, since men are still perceived as exclusively capable of filling the functions of rabbinical judges or rabbis – the most important positions in the religious world in terms of the creation and interpretation of Halacha.²⁵ From this perspective, it could be argued that the removal of women from public life and their separation from men served in the past, and continues to serve, primarily as a tool for securing power-based objectives. These norms enable men to enjoy unlimited control over all religious activities in the public sphere and hence dictate the limits of women’s autonomy and ensure their social inferiority and subjection to men.²⁶

A similar value-based hierarchy regarding women and men can be seen when other concepts identified with women, such as sexuality, are identified, thereby reinforcing the Halachic justification for gender segregation. “A woman’s voice is nakedness,”²⁷ the Sages claimed, reflecting the perception of women as sinners and seducers who lead men to stumble due to their sexuality, and, accordingly, require segregation, removal, and constraint. Moreover, the outcome of this position is the subjection of women to a regime of modesty intended to obscure women from the eyes of observers through covering their body; to isolate them socially through their confinement to the private realm; and to establish barriers preventing their bodies become the objects of observation and desire in public through the practices of gender segregation. “Modesty” actually means control of women’s sexual being. Women are obliged to conceal their sexuality, and must be prevented from leading men into temptation by their nakedness. It is the sexuality of women – and not that of men – that is perceived as requiring restraint. The rules of modesty apply primarily to women, and the essential goal is to protect men from women’s exuberant and negative sexuality. The following comment by Maimonides is a powerful illustration of this approach:

In a place where it is customary for a woman not to go out to the market place wearing merely a cap on her head, but also a veil that covers her entire body like a cloak, her husband must provide at least the least expensive type of veil for her. If he is wealthy, [the veil must be] commensurate with his wealth.

[He must give her this veil] so that she can visit her father’s home, a house of mourning or a wedding celebration. For every woman should be given the opportunity to visit her father and to go to a house of mourning or a wedding celebration as an expression of kindness to her friends and relatives, for [this will have a reciprocal effect], and they will return the visits. For a woman [at home] is not confined in a jail, from which she cannot come and go.

24. Deuteronomy 17:15.

25. Maimonides, Mishneh Torah, Hilchot Melachim Umilchamot, 1:5.

26. IRAC recently submitted a petition on behalf of 11 social organizations demanding the appointment of a woman as director-general of the rabbinical courts, in an effort to secure the first appointment of a one to an administrative function in the rabbinical court system (HCJ 5720/10 Center for the Advancement of the Status of Women et al. v Minister of Justice). The petition was struck out after the justice minister noted in his response that he had not yet formalized his position regarding the capacity of women to submit their candidacy for the position.

27. Kiddushin 70a.

Nevertheless, it is reprehensible for a woman constantly to leave home – once to go out and another time to go on the street. Indeed, a husband should prevent a wife from doing this and not allow her to go out more than once or twice a month, as is necessary. For there is nothing more attractive for a woman than to sit in the corner of her home, as it is written Psalms 45, 'All the glory of the king's daughter is within.'» (Mishneh Torah, Hilchot Ishut, 13:11).

In this rule, Maimonides demands the complete concealment of women – not merely head covering, but the covering of the entire body in a manner reminiscent of the Afghan burka. Maimonides also demands that women be prevented from leaving home, while adding the comment that she is not confined in a jail – a comment that suggests that many would feel that the limits placed on her liberty make her tantamount to a prisoner. This rule illustrates the fact that concealment on the grounds of modesty is a form of oppression.

The manner in which the sages chose to interpret the verse “All the glory of the king’s daughter is within,” and their assertion that “a woman’s voice is nakedness” and “one handbreadth of a woman is nakedness,” proved powerful tools in the social exclusion of women from religious functions. This is ironic, since both the latter quotes appear in tractate *Berachot* and are directed at men reciting the Shema prayer, instructing them to refrain from doing so in the presence of an uncovered woman or a woman singing in an erotic manner. The tractate imposes neither prohibition on places where women are to be present nor on their manner of dress. Only a patriarchal society could transform this rule into instructions for concealing, excluding, and removing women in a manner that structuralizes their exclusion from society at large. Over the generations, this interpretative approach was expanded, establishing gender segregation and perpetuating discrimination against women.²⁸

Segregation and hierarchy in religious ritual

The preferential status of men in the context of religious worship is mentioned in the Bible: “Three times in a year shall all your males appear before the Lord.”²⁹ Women were exempt from the pilgrimage to the Temple and remained at home with the children, allowing the men to devote themselves to worship. During the Temple period, although the worship was completely dominated by men (the Levites, priests, and pilgrims were all male), women also came on pilgrimages to the Temple. Women were mandated to make sacrificial offerings, such as the offering following childbirth and the Passover sacrifice. Thus, although they were not obliged to do so, women participated in the pilgrimage and reached the Temple. Sages commented approvingly on this practice and permitted women to lay their hand on the sacrificial offerings.

Once again, the sages interpreted the instruction “lay your hand” as referring to men, and not women. The sages added: “and we brought it [the peace sacrifice] to the Women’s Court, and women laid hands on it – not that the laying of hands has to be done by women, but in order to gratify the women” (Babylonian Talmud, *Chagigah*, 16b). Although this comment is a further example of the patriarchal approach of the sages, “permitting” the women to lay on their hands, it nevertheless shows that women took part in the ritual, and the sages sought to enable them to do so fully.

²⁸. See Hannah Kashat, *Feminism and Judaism – From Confrontation to Renewal*, Ministry of Defense – Laor, p. 130.

²⁹. Deuteronomy 16:16.

Women also participated in the Sukkot pilgrimage, including the water-drawing celebration (*Simchat beit hashoeva*). The historical process that came to see a woman's presence in public as nakedness, leading to her exclusion from the public domain, is documented against the background of this event. The Tosefta explains:

"Formerly when the ceremony of the water-drawing was observed, the men observed it from within the Temple precincts and the women from outside. But when the court saw that [despite attempts to separate men and women] they behaved in a frivolous manner, they erected three balconies in the court, facing the three sides, so that from them the women might behold the rejoicing at the ceremony. So when they were observing the rejoicing at the ceremony, they were not mixed up together" (Tosefta tractate Sukkah, 4:1).

The Babylonian Talmud presents two sources describing efforts to impose gender segregation according to what was known as the "Great Reform." The first attempt stated that the women should remain outside, while the men went in, while the second (originating in the *Beraita*, an earlier source than the *Tosefta*), stated that the women were to go inside, while the men would remain outside. Both attempts at horizontal gender segregation within the same space failed, according to the Babylonian Talmud, since they did not prevent a situation of frivolity. In response, the "Great Reform" imposed a form of vertical segregation: women sat on a raised balcony, while the men sat below. This model leaves women far removed from the focus of the event.

The significance of the Women's Court in the Temple

The fact that the Temple included a section known as the "Women's Court" may seem to imply that even in this period, the need to restrict the presence of women to a defined area was already recognized. However, the actual function of the Women's Court negates this interpretation. The Women's Court was the largest hall in the Temple – twice the size of the Court of Israel (i.e. the men's court). The Women's Court served as a main entrance for both men and women, and was the venue for major gatherings such as the water-drawing celebration and the *Hakhel* assembly, which were attended by members of both sexes. Men who were not participating in the ceremonies in the inner sections of the Temple stayed in the Women's Court. Equally, women were not confined to this area – they entered the Temple during pilgrimages and celebrations, and even offered personal sacrifices and laid their hands on the offerings. These activities took place in the inner sections of the Temple – the Court of Israel and the Priest's Court. The researcher Shmuel Safrai³⁰ suggested that the name "Women's Court" was only given to the area in the latter generations of the Temple period, since it does not appear in Joseph Flavius' description of Solomon's Temple and its courts.

Gender segregation at mass public events

The Babylonian Talmud describes an improvised form of gender segregation during the pilgrimages. Abai would arrange rows of jugs between men and women so that they could not move from one side to the other without making a noise. Rabba used plant poles for the same purpose (tractate Kiddushin

³⁰ Shmuel Safrai, Was There a Women's Section in the Synagogue in Ancient Times? *The Land of Israel and Its Sages in the Mishnaic and Talmudic Periods*, Hakibbutz Hameuchad 1983, 94-104.

81a). Rashi explains that the segregation was necessary because during the pilgrimages “groups of men and women come to hear the sermon and converse with each other.” Rashi deduces from the debate between Abai and Rabba that there was no permanent division, but only on the pilgrimages when there was concern for the danger of levity.

Maimonides associates the prohibition on mixed-sex eating with the rules of desirable behavior at the festivals:

“The court must appoint officers during the festivals to patrol the gardens and orchards and along the rivers to prevent men and women from gathering there to eat and drink, lest they fall into sin. They should warn all the people that men and women should not gather together in their homes in celebration and not drink wine to excess, lest they fall into sin” (Hilchot Yom Tov, 6:21).

Many later arbiters understood that Maimonides was not advocating a general prohibition on the mixing of the sexes, since elsewhere he ruled that there was no concern of “seclusion” (improper presence of a man and woman together) when large numbers are involved: “When there are many women with many men, there is no fear of ‘seclusion’” (*Hilchot Ishut, Issurei Biah 22:8*). His prohibition related solely to the pilgrimages, when the great joy, accompanied by eating and drinking of wine, might lead people to fall into sin. In a large gathering without the consumption of wine, however, Maimonides stated that there was no concern – “particularly in our times, when drunkenness is not widespread.”

Most of the demands for gender segregation in synagogues were based on the reform introduced regarding the water-drawing celebration, despite the fact that this is the exception to the general rule of mixed-sex attendance in the Temple. The physical segregation of men and women (and, in most cases, the less favorable location of the women’s section); the guarding of knowledge and education by men, granting them enormous power; and the demand for women to bear responsibility for sexual purity all led to a synthesis of a social structure and a gender-based hierarchy in which women are relegated to a supporting and subservient, or excluded role – in the name of religion.

This situation has begun to change since women have broken the barriers of exclusion through their own strength, initiative, and determination. Women have begun to study Torah, to write and debate, and to play an active role in the Beit Midrash, even though they remain outside it. The processes of reform in the religious system began during the Enlightenment. New streams in Judaism, such as the Reform and Conservative movements, began to demand changes toward social equality for women in ritual and in religious law. Within these streams, women play an equal role in study and synagogue ritual, and serve as rabbis and leaders. By means of these changes, the pluralistic streams seek to abolish the gender-based hierarchy that was characteristic of traditional Jewish society. Even within modern Orthodoxy, processes can be seen that seek to abolish gender hierarchy and segregation, although these are more gradual due to the attempt to remain within the confines of binding Halacha.

Conversely, within Haredi society there is a trend toward increasingly extreme practices that accentuate gender segregation. The phenomena described in this report reflect this trend, which seeks to apply the segregation established in religious settings – the synagogue, Beit Midrash, and other religious gatherings – to public frameworks that are completely unrelated to the religious life of the community

– clinics, post offices, buses, and so forth. In this respect, it is worth emphasizing that this phenomenon represents a change in the social patterns of the community, rather than conservatism and continuity. Our review of the hierarchical structure within Jewish society that excludes women as the “other did not identify commonly accepted patterns of gender segregation within public space in general, but rather the patriarchal assumptions that permit such segregation in the religious context. The extension of these norms to the civilian and public sphere is an innovation promoted by extremist elements within Haredi society and a reaction to the realities of the surrounding Israeli society. To the best of our knowledge, Haredi communities outside Israel have not raised such demands. The ideological claim by such groups within Haredi society that their activities are conservative and seek to promote continuity and adherence to past customs is merely a cloak for processes of change and extremism that depart from the patriarchal starting point of traditional religious society.³¹

31. See: Yaacov Katz, *Halacha in a Vice*, Magnes Press, 1992; Immanuel Sivan and Kimi Kaplan (eds.), *Israeli Haredim: Integration without Assimilation*, Hakibbutz Hameuchad, 2003, pp. 224-276.

C. Legal Analysis of the Demand for Gender Segregation

Public space in the State of Israel, which maintains a liberal-democratic regime, is essentially egalitarian and common for men and women alike. Creating segregation between men and women in physical space and in the provision of services is contrary to the law of the State of Israel. In this chapter, we discuss the principles and provisions of Israeli law that contradict gender segregation in public space.

The principle of equality

The principle of equality is one of the basic values of Israeli law – “the life and soul of our entire constitutional system” (Justice M. Landau, in HCJ 69/98 Bergman v Minister of Finance, *Piskei Din* 27(1) 693, 698).

The rationale behind the principle of equality and the prohibition of discrimination has been described in the following terms:

“There can be no element more destructive to society than the impression on the part of its sons and daughters that they are treated partially. The sense of inequality is one of the gravest of feelings. It injures the forces that unite society. It injures the intrinsic identity of the individual.”
HCJ 953/87 Poraz v Mayor of Tel Aviv-Jaffa, *Piskei Din* 42(2) 309, 332.

Distinction between women and men in the public sphere, in the purchasing of services or goods, or in the receipt of services from official authorities, such as the National Insurance Institute and so forth, is a form of differentiation applied in the absence of any relevant differences, and, as such, it injures the right to equality. The Supreme Court has established that discrimination of a collective nature, such as discrimination on the grounds of sex, entails the profound humiliation of the victims, and accordingly is contrary to the Basic Laws. Supreme Court President Barak determined that the scope of the right to equality protected by the constitutional value of human dignity is not limited solely to discrimination entailing humiliation, but to any discrimination that negates the individual's freedom of choice and freedom of action. The segregation of women and men in public space is tantamount to denying freedom of choice. A woman is obliged to sit in the back and not in the front, or to stand in one line rather than another, and this entails injury to her autonomous freedom of action.

The right to dignity

In 1992, the State of Israel enacted the Basic Law of Human Dignity and Liberty. This law establishes the right of any person in Israel to dignity. The segregation of women and men in public space relates to men and women not as human beings per se, but as sexual beings, against their will. This injures not only their right to equality, but also their right to dignity.³² The determination that women must sit in the back of a hall or conceal themselves behind a dividing screen so that they remain invisible conveys the

³². See: Yaacov Katz, *Halacha in a Vice*, Magnes Press, 1992; Immanuel Sivan and Kimi Kaplan (eds.), *Israeli Haredim: Integration without Assimilation*, Hakibbutz Hameuchad, 2003, pp. 224-276.

message that men see women as obstacles and as objects of temptation. Accordingly, so that men can move in the public arena without being disturbed, women must accept demands for segregation that enable men to avoid seeing them. These messages impair the ability of women to define themselves as they wish. Instead, they are defined against their will as a sex object in a sexist manner, thereby violating the women's rights to dignity, liberty, and self-definition. Moreover, the fact that, as detailed above, gender segregation actually means the exclusion of women and their displacement to the rear, means that it replicates patriarchal models intended to prevent the expansion of egalitarian and liberal ideals among the general public, including the Haredi community, and hence to maintain the inferior status of women in Haredi society. Accordingly, a woman's right to dignity includes the right to not be excluded from the public arena and from the front section of public spaces. In the case of gender segregation in public spaces, there is a double injury to dignity and equality. The first injury lies in the fact that men and women are defined on the basis of their gender in public space. An individual's right to dignity is violated when he or she is treated on the basis of his or her gender against his or her will. Secondly, the right to equality is violated by the act of distinction and segregation.

The court considered the question whether segregation may be considered a type of distinct treatment that is not discriminatory, and ruled:

"Segregation offends the minority group that is excluded, heightens the difference between its members and others, and perpetuates feelings of social inferiority" (HCJ 6698/95 Ka'adan v Israel Lands Administration, Piskei Din 54(1) 258, 279-280).

The Committee to Examine Transit Arrangements in Public Transport on Lines Serving the Haredi Public, which was appointed by the Minister of Transportation on May 11, 2008, in accordance with the recommendation of the Supreme Court in the pending petition submitted by IRAC, determined, in its final report dated October 26, 2009:

"On the face of the matter, the current arrangement for segregation as presented to the Committee constitutes, according to its outcome, at least substantive injury to equality, particularly the equality of the women seeking to use these transportation lines. The injury to equality is manifested, as explained at length, in the fact that the women are distinguished on the basis of their sex in terms of the service they receive, the place at which they board the bus, the place where they sit, the manner of the dress, and the manner in which they are treated. The fact that some of these women do not consider this arrangement to be injurious to them does not alleviate the defect, which is essentially objective and not subjective, inherent in a gender-based treatment that is not relevant to the service itself. Accordingly, and certainly with regard to an administrative arrangement, this cannot, in the Committee's opinion, override the principle of equality."

Women as a social group have suffered social and cultural exclusion throughout human history. The Feminist Revolution, which began in the eighteenth century, has gradually enabled women to realize their basic civil rights. Women struggled for their right to obtain a higher education in universities, for their right to equal professional opportunities in acceptance to employment, and for their right to fill key positions without interference by sexual harassment in the realization of their professional capabilities. Women's struggle for equality is still not over. On average, women still earn less than

men. Most senior positions are still filled by men. In Israel, most of the Members of Knesset are men, and one in every three women in the country has experienced sexual assault. The fact that full equality between men and women in the public arena has not yet been achieved is due to the remnants of the same patriarchal attitudes that once excluded women from this arena and reserved it entirely for men. Gender segregation in the public sphere reflects the same patriarchal attitudes that blocked public spaces from women, and hence it is tainted by the discrimination and humiliation of women.

Injury to liberty

A physical segregation between women and men also injures personal liberty, since it prevents the individual from moving from place to place freely and without reference to gender. Segregation in the public sphere classifies humans according to their gender, thereby injuring their liberty. Injury to liberty is not confined to imprisonment or incarceration; it is also seen whenever the freedom of movement of individuals is curtailed. The division of the public sphere between women and men impairs the basic liberty of all citizens to access public space. The determination that only individuals who are men may enter a given public place causes gross injury to women's right to liberty, and vice versa.

Injury to freedom of conscience and freedom from religion

Freedom of religion is a basic right in Israeli law. This right, which was ensured in the Declaration of Independence, is now derived from the constitutional right to human dignity and liberty (A. Barak, Interpretation in Law (Vo. 3), p. 430). The courts have ruled that the concept of freedom of religion and conscience also includes freedom from religion. This principle implies that a religious commandment is not imposed, directly or indirectly, on those who do not observe these commandments and do not wish to do so. In this context, Supreme Court President Barak noted:

“Indeed, in my view, freedom of religion is also an aspect of human dignity. Thus, against the freedom of religion of one, we have the freedom of the other to act in accordance with the autonomy of individual will. This is the freedom of the individual to not consider himself bound by a religious prohibition in which he does not believe. This is the freedom of the individual to follow his own path, in his life and in his death, in accordance with his view.”

HCJ 6024/97 Shavit v Gahsha Hevra Kaddisha, Rishon Lezion, Piskei Din 53(14) 600, 650.

Furthermore:

“Allowance for religious considerations and for the religious way of life is prohibited if the exercise of authority is intended to enforce religious commandments on a person. Allowance for religious considerations and for the religious way of life is permitted if it is intended to manifest the religious needs of the individual... Religious coercion is indeed contrary to the right to freedom of religion and to human dignity. Allowance for religious needs is consonant with religious freedom and human dignity.”

HCJ 5016/96 Horev v Minister of Transportation, Piskei Din 51(4) 1, 36.

In this context, a distinction is usually made between the private domain and the public domain. Individuals are free to practice their religion in their own home, but may not impose the commandments

of their religion on others in the public domain:

*“The city street is one thing, and a person’s home is another. The state and its agents – including the government, the administration, and the courts – will protect and defend the freedom of religion of each individual in his home, but on leaving his home and entering the public domain, or the private domain of another, he will no longer be able to impose his will and opinion on others. The private domain belongs to each individual, while the public domain belongs to the public. His Jewish dignity is manifested internally, and within his home, the state shall protect his right to act as he wishes (subject to considerations of protecting others and maintaining public order), observers of the commandments and non-observers alike. Not so in the public domain, provided public order, external customs, and public wellbeing are maintained... **The interest assumed by observers of the commandment is of great-to-crucial weight within their own home, and insofar as they demand something for themselves; as they distance themselves from their home and approach the public domain – or the private domain of another, or insofar as they seek to deny something to another, the force of this interest declines, and faces the interests of others, in the public domain or in their own private domain.** [Emphasis added]*

H CJ 3872/93 *Mitral v Prime Minister*, Piskei Din 47(5) 485, 500-501, 506-508.

Individuals who observe strict segregation between men and women may do so in their own home. But when it comes to services intended for all the residents of the state, religious and secular alike, strict norms of segregation are not to be imposed, since this injures the residents’ freedom of conscience and their right to freedom from religion.

The clash between individual rights and injury to religious sentiments

If the Haredim claim that the absence of gender segregation offends their feelings, can this justify the segregation of women and men in public spaces in which Haredim are the principal consumers or users?

In the Horev case, the Supreme Court considered a decision by the Minister of Transportation to close Bar Ilan Road in Jerusalem to motor vehicles during prayer times on Sabbath and the festivals. Secular residents living in the area appealed against the decision, arguing that it violated their freedom of movement. The case revolved around the clash between the constitutional right to freedom of movement of the secular residents and the injury to the sentiments of the religious residents in the area. In this case, the court ruled that consideration for religious feelings that does not amount to religious coercion is permitted, but the decision to prohibit motor vehicles on Sabbath constitutes a disproportionate injury to the secular residents’ freedom of movement. Supreme Court President Barak (at the time) stated:

“In a democratic society, not every injury to feelings justifies injury to rights. Injuries to feelings justifying injury to rights must naturally be serious injuries to human sentiments. These are injuries whose occurrence cannot be prevented by the individual; in most cases, they are injuries to the feelings of a ‘captive audience.’ The strength of injury to feelings justifying injury to rights may vary from one right to another. In the case of basic human rights viewed as the essence of democracy – such as freedom of expression... the strength of the injury to feelings justifying injury to a right must be severe, serious, and grave. Only comprehensive and profound injury to

*feelings – including injury to religious sentiments and to the religious way of life – will justify injury to freedom of expression. **These shall be exceptional and special instances which, by their character, shake the pillars of mutual tolerance.***

The court also discussed the strength of injury to feelings justifying injury to rights in the context of the Pride Parade:

“In the circumstances of the case, we were indeed willing to assume that, from the perspective of Haredi circles, the holding of the planned parade might have caused genuine and true injury to the religious sentiments of Haredi and religious residents of Jerusalem. However, this is not enough. The question is whether an injury to feelings was present which, by its nature and strength, justifies denying the freedom of expression and demonstration in a democracy based on social pluralism. Clearly, the answer to this question cannot be determined in accordance with the force of rioting by a lawless mob... With reference... to the eventual format and location of the event, and its intended character – the natural conclusion is that the injury to religious sentiments did not pass that high threshold required for the purpose of the retreat of freedom of expression and demonstration in our legal system.”

HCJ 8988/06 Meshi Zahav et al. v Jerusalem Police Commander, not yet published, ruling dated December 27, 2006, in section 16 of the president’s ruling.

Does mixed-sex public space constitute such injury to religious sentiments as to justify segregation in certain locations? This question touches on the character of the State of Israel as a multicultural society.

Israel as a multicultural state

Multiculturalism and the liberal principle

The question of the demands for gender segregation in public space is a powerful example of the multicultural dilemma. There can be no doubt that Israel is a multicultural state; it is home to groups that have different and distinct identities. The question is, what is the scope of the state’s obligation to enable cultural groups, including illiberal groups, to realize their cultural agenda, when this is contrary to basic liberal principles such as liberty, equality, and the values of pluralism and tolerance? The demands by Haredi society to impose gender segregation raise the question of the extent to which the State of Israel, as a state committed to democratic values on one hand, and to Jewish values on the other, should respect the wishes of this group to act in accordance with its way of life. Where should the state draw the line and determine that the individual right to liberty, dignity, and equality outweighs the right of a group to realize its own culture?

In this section, we shall attempt to delineate a course for determining this complex issue.

Before establishing the limits of the rights of any given cultural group in a liberal society, we should ask ourselves how we are to define the concept of a “cultural group.” The definition would seem to include both an objective and a subjective component. The objective component examines the parameters according to which it may be stated that we are dealing with a distinct national, racial, religious, or ethnic group. The subjective component examines the feelings of the members of the group regarding the

essence and meaning of their collective affiliation. This subjective component highlights a crucial point in terms of efforts to develop solutions to the multicultural dilemma, namely the fact that individuals to make choices regarding their culture. An individual may begin their life as a member of one group, and later join another. They change and develop over time: individuals undergo psychological changes in their lives, changing their religion or deciding to adopt the religious commandments of their faith. Migrants change their national affiliation into national origin, while others may reject their original culture and adopt another in its place. With this in mind, we must understand the right of exit enjoyed by the members of a cultural group, as required in accordance with the liberal approach that society must act to promote the existential wellbeing of its members.³³

The existential wellbeing of the members of a liberal society is closely associated with the value of autonomy. According to the liberal approach, the individual is perceived as someone who tells their own life story and is free to shape their life as they wish. The autonomous individual is an ideal that reflects an individual's ability, to a certain extent, to control their own fate through the decisions they take relating to their own lives. A society committed to the value of autonomy must help its members to enjoy conditions that consolidate their ability to live autonomous lives. In other words, it must ensure that vital material and institutional means are provided for the effective activation of the individual's personal and public autonomy.³⁴ Autonomy implies that the individual can develop their own distinction between good and evil, realize their aspirations, shape their identity, and choose the cultural group to which they wish to belong.

The basis for the liberal solution is the assumption that society comprises different cultural groups. A person may be religious, may belong to a particular ethnic community, and may be a member of a community with a particular sexual orientation. Each of these groups will affect this individual's life in differing and profound ways. The liberal objective is to enable the individual to realize such cultural and collective affiliations simultaneously in order to maximize their personal development. Accordingly, the solution lies in withdrawing the state from direct involvement in the cultural affairs of its members.

Individual rights enable cultural groups to realize their cultural enterprises while enjoying relative freedom. Accordingly, there is not necessarily any contradiction between individual rights and collective cultural needs. On the contrary: individual rights assume that many individuals will realize the liberties they enjoy in a collective cultural manner. A liberal society recognizes that such cultural affiliation enhances the character and depth of the individual's capacity for self-realization. Liberty and expression are far more meaningful thanks to the cultural activity.

One of the basic values guiding cultural realization in a liberal society is tolerance. This component requires the members of the society to accept cultural enterprises with which they do not agree or identify. Tolerance is not synonymous with apathy. I may have a strong distaste for your culture, but I shall still be obliged to accept your ability, and that of your fellows, to realize this culture. A cultural group may regard the cultural enterprise of another group with hostility. Liberal tolerance implies

33. G. Guntovnik, "The Right to Culture in a Liberal Society and in the State of Israel," *Iyyunei Mishpat* 27(1) 23-70.

34. Z. Bronner and Y. Peled, *Autonomy, Capacity and Democracy: A Critique of Liberal Multiculturalism*, *Multiculturalism in a Democratic and Jewish State: In Memory of the Late Rosen Zvi* (M. Mautner, A. Shamir, eds., 5755), 107, 121. See also: G. Guntovnik, "The Right to Culture in a Liberal Society and in the State of Israel," *Iyyunei Mishpat* 27(1) 23-70, at 33.

constraint and restraint, and sometimes even reconciliation to cultural differences in society. Respect for differences is a product of the ability we attribute to individuals to shape their lives as they see fit.

These basic liberal assumptions shape the restrictions to be imposed on a cultural enterprise in a liberal society:

1. The fundamental restriction is the rejection of the use of physical violence. Recognition of the sanctity of human life is the basic component for the conduct of liberal society. This foundation cannot be weakened on cultural grounds, and a liberal society cannot compromise on this matter. A good example of this point is the refusal to accept blood feuds or so-called “honor killings.”

2. A further restriction deriving from the liberal distaste for violence relates to the tools available to a cultural group to enforce obedience to its cultural norms among its own members. The violent coercion of particular cultural content is unacceptable. “Modesty patrols,” for example, which use violent methods to enforce the values of modesty in Haredi society, will not enjoy tolerant treatment in the framework of liberal multiculturalism. The inability to apply such methods entails a concession that many illiberal groups will be obliged to accept. It requires cultural groups to accept the presence of other cultural enterprises of a competitive and contradictory nature. This increases the possibility that the cultural content of such groups may undergo change. Cultures are expected to change as the result of their life within a liberal and multicultural society. Action within a pluralistic environment will influence the members of the group. Cultures will only be able to maintain the affiliation of their members through (non-violent) social persuasion and through the contribution they make to their members’ existential wellbeing.

3. Furthermore, the liberal approach takes a hostile view of the internal restrictions a group imposes on its own members. The coercion of individuals to remain faithful to a fixed cultural package should not be permitted in the name of the right to culture. The imposition of such coercive restrictions contradicts the commitment of liberal society to the basic values of individual autonomy and dignity. The understanding of the collective cultural package as one that may change denies the possibility of allowing a cultural group to use the power of law to prevent such change. Thus, for example, the court refused to allow a Haredi company managing an apartment block to establish in a contract that the rights of a resident who fails to observe the religious commandments may be transferred to another. According to the same logic, legislation cannot be used to impose gender segregation in buses serving the Haredi community.³⁵ Moreover, the principle that applies to the different groups in society is the right of individuals to develop or change their identity. Cultural affiliation is not the product of fate: it may change. This is the background against which we should understand the liberal commitment to the “right of exit.” In practical terms, this right is limited, since it will not be easy for someone to cast off the values with which they grew up and the social conventions within which they function. Accordingly, limits must be imposed on the steps that may be taken by cultural groups in order to prevent the right of exit. For example, these groups should be required to provide their members with a basic education enabling them to function independently in economic terms, and, as noted above, they should not be permitted to impose coercive restrictions.

35. The Committee to Examine Transit Arrangements in Public Transport established in its conclusions that such legislation violates basic principles in a manner that is incompatible with fundamental legal tenets and with the Israeli system of government and society. See p. 58 of the committee’s report.

It is not easy to define the boundaries of liberal tolerance. The essential difficulty is that the values of human autonomy and dignity permit the existence of illiberal groups within society, while at the same time restricting their freedom of action. One of the clearest limits in a liberal society is that a minority group cannot enforce its practices on individuals through violence or through the use of the law. It certainly cannot enforce practices that injure the individual rights of citizens who are not members of the minority group but of the majority group in society. Since public space is used jointly both by the minority group and the majority group, limits must be imposed on multiculturalism in order to defend the autonomy of individuals against fundamental injury to their right to equality and non-discrimination. Once the demands for gender segregation leave the community synagogue and moves into general public space, they are rendered unacceptable, since this space is shared by all citizens in a manner that cannot permit segregation between members of the minority and majority groups.³⁶

It must be recalled that the Haredi community has flourished in Israeli society. This is no coincidence. Apart from the political power enjoyed by the Haredim, this success reflects the fact that the liberal values to which Israeli society is committed have enabled the simultaneous cultural presence of numerous cultural groups, some of which are illiberal.

However, liberal tolerance has – and must have – its limits. When these limits are crossed, the right to culture will not prevent intervention by liberal society in cultural practices that violate basic liberal values. The imposition by a minority group on the majority group of non-egalitarian values crosses the border of recognition of minority rights. Coercive or violent enforcement of gender segregation, such as that encountered in the separate bus lines, is also prohibited as a matter of principle. The liberal commitment to pluralism and tolerance requires different cultural groups to reconcile themselves to the existence of other, contradictory cultural groups. Thus, the Haredi community cannot force women passing through their neighborhood to accept gender segregation against their will. Segregation in Haredi public space is a slippery slope that may lead to the enforcement of discrimination, injuring liberty and dignity in a manner that is unacceptable to a liberal society.³⁷

Furthermore, it must be considered that minority groups are not monolithic. Women often constitute a minority within a minority and, as such, are exposed to the injurious practices of minority groups that are defended by the majority society in the name of liberal values. In Haredi society, for example, no one has asked women themselves whether they are interested in gender segregation. Women did not shape the norms of segregation, which are imposed by men and serve men's interests, and they have no possibility to change these norms. A liberal society cannot accept practices that are injurious to women, particularly when these women's voices are not heard. Any decision regarding the cultural rights of a minority must be made in cooperation with the female members of that minority.

36. The Supreme Court recently ruled on this matter regarding segregation between men and women in the Mea Shearim neighborhood of Jerusalem, quoting the state's position that gender segregation is not to be permitted in the public domain. HCJ 6986/10, Rachel Azaria et al v Israel Police (not yet published).

37. See G. Guntovnik, "The Right to Culture in a Liberal Society and in the State of Israel: Living the Contradictions," in: *Economic, Social, and Cultural Rights in Israel* (ed. Y. Rabin and Y. Shani, eds.), p. 619.

Multiculturalism in Israeli law

Israel's Declaration of Independence promised that the State of Israel "will ensure freedom of religion, conscience, language, education and culture." However, the right to culture has not been explicitly recognized or even defined in Israeli law.

The approach of the Supreme Court appears to be that different cultural practices are subject to basic human rights, including, of course, the right to dignity and equality. In HCJ 1067/08 Noar Kahalacha v Ministry of Education, Justice Meltzer approvingly quotes comments by Professor Menachem Mautner in his book *Law and Culture at the Turn of the Twenty-First Century*, in which Mautner states:

"Since we have activated the obligation to act with dignity toward humans as a justification for refraining from intervention in their cultures, we must then say that if we identify a group whose culture is not based on a position of respect for human dignity, the group's claim to justify non-intervention in its culture will expire and the door will be opened to intervention in its cultural practices in order to restore dignity to its human members. There would be an internal contradiction in permitting a group to block intervention in its practices in the name of the need for human dignity while these practices themselves are based on a lack of respect for human dignity."

Judge Boaz Ukon made the following remarks in Admin. Petition 1320/03 Menachem Mendel Alkaslasi v Municipality of Betar Illit, in section 22 of the ruling:

"The temptation to view distinctive frameworks as promoting the interests of the community in a multicultural society is considerable, but it entails a potential trap. In a multicultural society, in particular, the existence of broad and diverse general frameworks must be ensured. Only the existence of such frameworks will ensure social dynamism and prevent the creation of cults that erode society and jeopardize its very existence."

While the argument in favor of gender segregation is rooted in freedom of religion and the prevention of injury to the members of the minority group, the above comments indicate that in considering such arrangements, we should first and foremost take into account considerations of human dignity and equality. Simple deduction requires that if practices that are injurious to the dignity of the members of the group itself are to be blocked, then it is obviously possible to block practices of this type when they appear in the public domain and diminish the equality of members of other groups.³⁸

In the same context, we must also address the fact that, until now, the Haredi community in the State of Israel has accepted the existence of a mixed-sex public domain and has not considered this to injure its religious sentiments. Gender segregation in Haredi society has been applied only for the purpose of religious ritual, or in private events. Haredi religious law itself permits its members to go out in public, in a reality in which the two sexes mix. Thus, for example, Rabbi Moshe Feinstein, a Haredi arbiter who enjoys considerable influence within the Haredi world, has ruled that the use of public transportation that brings together men and women, and sometimes even leads to unintentional physical contact, is not contrary to any Halachic prohibition or religious sentiment.³⁹

³⁸. See sections 126-127 of the report of the committee established by the Ministry of Transportation, see above.

³⁹. Halachic Ruling by Rabbi Feinstein on the Use of the Subway and Buses, Even Ha'ezer, Igrot Moshe, p. 326.

Discrimination in violation of the Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law, 5761/2000

The Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law, 5761/2000, provides the legal basis for the prohibition of discrimination between men and women in the provision of services. The intention of the law was to extend the principle of equality in human relations and to prohibit practices of discrimination on the part of private bodies and individuals involved in the provision of a product or public service or in the operation of a place intended for public use. In these circumstances, the law establishes that:

“A person engaged in the supply of a product or public service, or in the operation of a public place, shall not discriminate in the supply of the product or service, in the granting of entry to the public place or in the provision of a service to a public place on the grounds of race, religion or religious group, nationality, country of origin, sex, sexual orientation, political opinion or party affiliation, personal status, parenthood, or disability.”⁴⁰

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The purpose of the law, therefore, is to ensure that the owners or managers of private locations of a public character, such as clubs, banqueting halls, cafes, buses, swimming pools, and so forth cannot dictate selective or segregating policies based on racism, sexism, or other discriminatory grounds, thereby impairing the value of equality.

However, the legislators were concerned that the sweeping application of the principle of equality to relations governed by private law might injure the rights of religious or traditional communities which, on the grounds of religion, tradition, and faith, maintain frameworks of segregation between women and men. The Haredi population and traditional Muslim or Druze populations are examples of such communities. Accordingly,⁴¹ a special exclusion was added to the law permitting gender segregation only. This exception states that:

“Discrimination in accordance with this article is not considered to be present in the existence of separate frameworks for men or women, when non-segregation would prevent or deny part of the public the supply of the product or the public service, entry to a public place, or the provision of the service in a public place, provided that the segregation is justified with reference, inter alia, to the character of the product, the public service or the public place, the extent to which it is vital, the presence of a reasonable alternative, and public needs liable to be injured by segregation.”⁴²

The only segregation that is explicitly approved by the law is that between women and men, thereby permitting potential injury to the principal of gender equality.

40. Article 3(A) of the law.

41. Amnon Rubinstein, chairperson of the Knesset Constitution, Law and Justice Committee, explained in this context: “My friends, we have a complex society here that includes elements among whom segregation is an accepted practice, not only in vital services, but in everything; not only among Jews, but also among Muslims and Druze, for whom segregation forms part of their way of life, and we do not wish to impose a different way of life on them” (Protocol No. 188 of the Meetings of the Knesset Constitution, Law and Justice Committee, dated October 30, 2000).

42. Article 3(D)(3) of the law.

It must be noted that, in accordance with the exception to the law, several conditions must be present in order to validate the practice of gender segregation:

- A. Without segregation, a given group will be unable to use the service.
- B. The segregation is justified with reference to the nature of the service.
- C. It must be considered whether the service is a vital one.
- D. It must be ensured that a reasonable alternative exists free of segregation.
- E. The needs of the public injured by segregation must be taken into account.

It emerges from the deliberations of the Knesset Constitution, Law and Justice Committee regarding the proposed law that the aforementioned exception was intended mainly to refer to cultural activities within the Haredi sector, and not to services provided in the community or to commercial outlets. The examples raised during the discussions included segregation in swimming pools, banqueting halls, entertainment venues, and the screening of movies.

Thus, for example, the deputy attorney-general made the following comment during the discussions of the Knesset Constitution, Law and Justice Committee:

Attorney Joshua Schoffman, Ministry of Justice:

"We wished to avoid preventing matters about which there is consensus, for example, when there is segregation between men and women in screening a movie for the Haredi public. But there is a reservation – provided that it is justified with regard to these grounds, since there is a difference between a performance by a singer and something that is another vital service, such as a medical service, for example."

Chairperson Amnon Rubinstein notes:

"I make a distinction between the services of the community itself and official services. Official services are not connected with this law."

The above comments show that the exception was not intended to apply to official services or to shops and clinics, but to a restricted number of services which, by their nature, raise the need for segregation, such as swimming pools or services intended exclusively for the Haredi population, such as the community's cultural events.

In conclusion, gender segregation in public space infringes upon the principle of equality, the right to dignity as enshrined in the Basic Law of Human Dignity and Liberty, and the right to freedom from religion. Moreover, gender segregation in the public domain is contrary to the Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law, 5761/2000.

D. Conclusions and Recommendations

The findings of this report identify a range of public, official, and private spaces in which we encountered gender segregation. The number and diversity of places in which gender segregation is demanded reflects a creeping trend to introduce segregation in places that were previously considered completely natural open space accessible to men and women alike. It would seem that the demand to separate men and women on buses, which was first raised in 1997, was merely the beginning of a process in which a particular segment of Haredi society has led a process of change within that society. The result is gender segregation in clinic waiting rooms, post offices, tours, conferences, shops. A committee established by the Ministry of Transportation found that gender segregation on buses is manifested in the force of coercion, including the use of verbal and physical violence.

The growing phenomenon of gender segregation raises numerous practical, legal, and moral questions. The liberal and democratic public has a natural distaste for segregation, which contradicts the value of equality between the sexes. Gender segregation is reminiscent of systems based on racial segregation that operated in the past in the United States and in Apartheid South Africa. On the other hand, the Haredi community constitutes a minority in Israel and maintains a way of life in which gender segregation plays an important part. The question that arises, then, is to what extent society should be willing to take such customs into consideration. Moreover, we must also consider the position of women as a disadvantaged and disenfranchised group within Haredi society. These women's voices are not heard, since they are not included among those who make decisions in this community. Indeed, the voices of moderates are not generally heard within Haredi society, since the dominant trend is one of increasing religious fervor, regimentation, and insularity.

The expansion of gender segregation includes two key processes that should be considered. The first is the sphere of influence within Haredi society itself. The growing number of private places that impose gender segregation heightens the tendency to extremism in Haredi society and accentuates processes of social isolation, as well as the oppression of women within this society. The second sphere is the influence on Israeli society as a whole, which faces a situation in which overtly public spaces are becoming separate. Even when this phenomenon is manifested in HMO clinics, police stations, or post offices within neighborhoods that have a Haredi character, they are also invariably used by the non-Haredi public. The result is that citizens face a situation in which a general service that should be provided on an egalitarian basis to all those who require it is presented in a manner that embodies discrimination and contravenes dignity. If the state decides to enable the Haredi public to create segregation between women and men in public space, it will find itself obliged to create two parallel tracks of services, one that imposes gender segregation and one that ensures egalitarian treatment for all. This will require the state to incur double expenses for the allocation of services – something it is difficult to justify. Such a situation also violates the principle of equality, the right to dignity as enshrined in the Basic Law of Human Dignity and Liberty, and the right to freedom from religion. Moreover, gender segregation in the public sphere is contrary to the Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law, 5761/2000.

A further element of influence on the general public is seen in public spaces such as the Western Wall, streets in the center of Jerusalem, and residential neighborhoods in which gender segregation

is demanded, and which thereby create inequality, discriminating against the general public. Gender segregation is even seen on occasions when diverse sections of the public come to these locations, heightening the injury to equality and dignity. In the case of sites that “belong to everyone,” such as memorial and heritage sites, the problem can be solved only in a way that ensures that everyone enjoys equal access to the site. In the case of the Western Wall, for example, a viable solution could be the creation of a third section (alongside the separate women’s and men’s sections) allowing equal access to men and women, alongside the existing sections that meet the need of Orthodox society for separate prayer areas.

Some may describe the situation as one of conflicting interests: the individual rights of the Haredi woman against the interests of a minority group that demands adjustments to meet its way of life or the interests of a minority group against those of the democratic majority that favors the values of dignity and equality. However, it is important to recognize that not all the members of the minority group define their way of life as one that requires gender segregation in the public domain. No historical or cultural examination of traditional and Haredi society can support such demands. According to Israeli law, when a right is demanded that is not based on a prevailing norm, its status is weakened (HCJ 6024/97 Shavit v Gahsha Hevra Kaddisha, Rishon Lezion, *Piskei Din* 53(14) 600, 621-623).

These conflicting interests are currently being examined in Israel within the framework of liberal cultural discourse. This process has led to the acceptance of various practices, not all of which are liberal. The reason for this is an approach that views the right to culture as part of the right of each individual to autonomy. According to the multicultural approach, membership of a cultural community is perceived as a condition for creating a supportive cultural context and as part of the right to liberty. As we explained above, however, the principle of multiculturalism cannot be used to justify injury to the right of individuals to equality or dignity – not with regard to the member of the community itself and certainly not with regard to citizens who are not members of this cultural group and who find themselves injured by this process.

The following conclusions emerge from these multicultural values and from the facts presented in this report:

1. The practices of gender segregation presented in this report are not the outcome of a formal demand presented to the authorities of the State of Israel. Indeed, the state has not formulated a structured policy, including clear criteria for determining whether and how gender segregation may be imposed. The result is that gender segregation is the product of power-based actions and pressure from individuals within Haredi society who seek to create segregation on a localized basis, thereby establishing facts on the ground. Segregation is not imposed after consideration and examination of the needs involved relative to the price that others will pay as a result, including the injury to their right to equality and dignity – values that are protected under Israel’s Basic Law of Human Dignity and Liberty. The decision to impose gender segregation at a Ministry of Education conference, for example, is not the product of an informed and systematic process, but rather a localized decision relating to that particular conference, based on pressure from decision makers. Accordingly, the first point this report seeks to highlight is that **segregation is imposed without any awareness on the part of civil society in**

Israel concerning these changes, and on the basis of acquiescence to power-based dictates that are not regulated by law and do not embody due legal considerations.

2. In a Western liberal state, public space should reflect the values of liberty and equality. Accordingly, such space must be accessible on an egalitarian basis. The examples presented in this report emphasize that this phenomenon is not confined to religious or cultural customs manifested within the internal sphere of the Haredi community, but extends to basic services required by all citizens. It is impossible to apply a dichotomous division of neighborhoods into some that are classified as Haredi, in which gender segregation is imposed, as distinct from “secular” neighborhoods, where segregation will not be permitted.⁴³ Such a territorial demarcation is tantamount to authorizing the use of terror, such that all the residents of the Haredi neighborhood must accept the regime of gender segregation as binding. A dichotomous division of neighborhoods creates, on one hand, gross discrimination in the public realm that will prevent non-Haredi individuals from living in the neighborhood, while on the other it generates fear in non-Haredi neighborhoods that if the neighborhood acquires a Haredi character, gender segregation will be imposed on services. This phenomenon is already evident in neighborhoods of Jerusalem where residents fear that a snowballing process of “Haredization” will lead to changes in the public sphere. Accordingly, it must be ensured that public services and private establishments providing public facilities continue to have a uniform character that leaves the public domain open to all, and does not infringe upon the right of any individual to dignity and equality.

3. The fact that all the rabbis and those who dictate policy in Haredi society are men and those who are injured are women in of itself constitutes powerful evidence of the manner in which these demands reflect the desires of individuals within the group. The situation is graver still given that even among the male members of Haredi society, many groups consider gender segregation an undesirable and extremist phenomenon that is not required by the Halacha and does not improve the way of life of this society in religious or moral terms. In such a situation, it is inappropriate for Israeli law to support practices of segregation that discriminate against women within Haredi society and that are a subject of disagreement within the cultural group itself.

4. The following are the practical recommendations of the report:

Gender segregation should be prohibited in any official service, including services provided by companies with a governmental or public character, such as the postal company, the electric company, the railroad company, and HMOs – even within clearly Haredi neighborhoods. Such segregation is contrary to the Prohibition of Discrimination in Products and Services Law. It is not

⁴³ See HCJ 10907/04 Solodoch v Municipality of Rehovot (not yet published), in which the court noted “the great scourge of segregation and isolationism, and the creation of closed communities that isolate themselves with social walls, encouraging discrimination and social alienation... Segregation and disconnection between cultural groups encourages hostility and rivalry...” See also: G. Guntovnik, “Minority Groups Asking the State to Close Them Off: Legal Walls, Social Fences, and Discrimination in Housing,” *Gated Communities* 425, 436 (Law, Society and Culture, ed. A. Lahavi, 2010). Guntovnik notes that “care must be taken in the case of any proactive step that encourages and promotes segregation, particularly when this is applied by the state. The existence of segregation by the state conveys a powerful message regarding its normative legitimacy – a message whose outcomes may be destructive, if it is excessive.

required by the character and nature of the product, and no one is prevented from receiving the service, even if segregation is not applied. The proof of this is that throughout the period since Israel's independence, the Haredi public has used these services without considering the egalitarian nature of the services a form of collective injury.

Segregation in physical space, such as the closure of roads, should not be accepted, even during special events such as Jerusalem Day and so forth. The municipality or the police must actively impose the prohibition against segregation, including the removal of signs intended to direct behavior. Segregation in physical space contravenes the right of women and men to dignity, equality, and liberty in the public realm.

Places of historical, national, and religious significance, and particularly the Western Wall, where religious and other ceremonies are held, should enable different streams to hold ceremonies according to their beliefs. In order to prevent offense to religious sentiments, such sites should maintain a separate area in which such ceremonies can be held.

No event funded by taxpayers should include gender segregation, including municipal events, with the exception of events whose character and content are clearly intended exclusively for the Haredi population (such as a study evening on the subject of ritual purity or education in large families for Haredi women). Gender segregation must not be imposed at any event that is not intended explicitly and exclusively for Haredim, even if many of the participants are Haredi. Public funds should be used equally for everyone's benefit, and cannot be exploited for discriminatory purposes that distinguish between individuals without good cause, such as discrimination between women and men wishing to participate in a public event.

Gender segregation in completely private businesses, such as banks and shops, also contravenes the right to dignity and equality, and accordingly it should be prohibited, even if the business is situated in a Haredi neighborhood. This should not be considered a violation of the religious freedom of Haredi society, since gender segregation is not a religious practice, and significant sections of Haredi society itself consider it an unwelcome deviation. A woman who is required to enter a shop through a separate entrance, or who is restricted in the hours when she may come to the shop, suffers humiliating and discriminatory treatment. As has been ruled in the US and in Israel, the concept of "separate but equal" is unacceptable. Segregation is inherently discriminatory. Recognizing the right of private businesses to separate men and women may be seen as a sign of tolerance for processes of increasing extremism within Haredi society and may blur the boundaries of a democratic and liberal state that must uphold the values of dignity and equality for all citizens. Accordingly, the state is obliged to prevent illiberal practice within the framework of multiculturalism. In keeping with this general principle, the state should encourage the private enforcement of the Prohibition of Discrimination in Products, Services, and Entry to Places of Entertainment and Public Places Law, 5761/2000 for women or men who have been injured by gender segregation.

Conferences and events intended for men only should be prohibited, since these infringe the above-mentioned law, insofar as no alternative is provided for women to receive the service. In these cases, too, private enforcement for female victims should be encouraged.

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